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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

LAWRENCE L.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Real Party in Interest.

B176137

(Los Angeles County
Sup. Ct. No. CK16392)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 39.1B). Marilyn H. Mackel, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)
Petition denied.

Roland M. Koncan for Petitioner.

No appearance for Respondent.

Lloyd W. Pellman, County Counsel, Larry Cory, Assistant County Counsel, and
Jacklyn K. Louie, Deputy County Counsel, for Real Party in Interest.

INTRODUCTION

Petitioner Lawrence L. is the adoptive father of Britney L., who is a dependent of the juvenile court. Under California Rules of Court, rule 39.1B, petitioner filed a petition for extraordinary relief seeking review of the juvenile court's June 16, 2004 order, which terminated child welfare services and set a permanency planning hearing under Welfare and Institutions Code section 366.26.¹ We conclude substantial evidence supports the order terminating services and setting the section 366.26 hearing. Accordingly, we deny the petition.

FACTUAL AND PROCEDURAL HISTORY

Both petitioner and real party in interest Los Angeles County Department of Children and Family Services (DCFS) set out the complete history of the juvenile court proceedings, which do not require repetition except when necessary to address petitioner's claims for extraordinary relief.

Petitioner is Britney's maternal uncle and is legally blind. He adopted her when she was two years old after Britney's mother failed to reunify with her due to the mother's drug abuse. In November 2002, when Britney was 10 years old, DCFS filed a section 300 petition alleging petitioner inappropriately physically disciplined Britney by striking her on the back with his hand, repeatedly hitting her with a belt and belt buckle on her body, and making her stand in the corner all night. Britney had bruises on her left arm and back, as well as swelling to her back.

Britney told police officers that petitioner had hit her with a belt and belt buckle and that she ran from home to a stranger's house to call the police. She was scared because this was happening more often. She was taken into protective custody and then to the hospital.

Britney told the social worker that petitioner probably beat her because her sweater was too small. She repeated this was happening more often and she did not want to be hit anymore. She also reported that two days earlier petitioner had made her stand in the corner

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

all night because he did not like the way she made his cappuccino. When petitioner later came to check on her, he punched her five to seven times with a closed fist because she was lying on the floor instead of standing. He then made her stand in the corner the rest of the night.

On November 14, 2002, the juvenile court found prima facie evidence to retain Britney and ordered the following reunifications services: (1) individual counseling, (2) conjoint counseling if permitted by Britney's therapist, (3) parenting classes, and (4) monitored visitation. All counseling and parenting classes were ordered to be funded by the Post Adoption Unit. In December 2002, after the juvenile court sustained the section 300 petition, the court additionally ordered petitioner to undergo individual counseling to address anger management and parenting skills. Britney was later placed with her grandmother Vivian, who reported that petitioner had been verbally and physically abusive towards Britney for several years.

By the six-month review hearing in June 2003, Vivian seemed to be a maternal figure in Britney's life. Britney told the social worker during each visit that she was very happy living with her grandmother and that she felt safe. Britney's schoolteachers reported that she was improving and doing very well. Britney's therapist had diagnosed her with Post-Traumatic Stress Disorder and reported that Britney continued having bad nightmares about petitioner killing Vivian and about no longer being able to live with Vivian. The therapist opined that Britney was stressed about telling petitioner she did not want to return home and was concerned Britney would be revictimized if sent back home. The therapist recommended against conjoint counseling with petitioner because she was not ready and it would impede her progress.

Britney had also told the social worker that she did not want to return back home. She was scared if she returned that petitioner would "do the same things." She recounted how petitioner had kicked her in the stomach "two or three times on different days in the same month," broke her thumb in the second grade when he hit her with a broom, spat at her, punched her in the eye, slapped and spanked her.

The Evidence Code section 730 evaluation the juvenile court ordered for petitioner, Britney and Vivian was submitted for the continued 12-month review hearing in February 2004. Dr. Dorothy Tucker confirmed the prior diagnosis that Britney had Post-Traumatic Stress Disorder and noted that Britney shuts down whenever the topic of conjoint counseling was brought up -- the same reaction Britney's therapist observed. One prevailing theme in Britney's testing was the fear of being physically hurt. Britney was adamant that she did not want to return home.

Petitioner could not participate in the traditional battery of tests because of his visual difficulty. But some tests were read to him and he responded orally. Dr. Tucker concluded the test results were invalid because petitioner denied having any problems. "All that can be inferred is that he was either denying any problems consciously in an attempt to sway this evaluator, or he was employing denial because he is exceptionally defensive, unwilling to acknowledge psychological problems and/or he minimizes and disregard[s] any problems he may have beyond his glaucoma." Dr. Tucker did, however, provisionally diagnose petitioner with Personality Disorder NOS.

Dr. Tucker further opined that as petitioner's "eyesight deteriorated, so did his parenting ability. The blind need an almost static environment in order to make their way through it alone. As his needs for consistency -- even rigidity, in his living situation increased, he became more rigid in his discipline and as his needs increased, his ability to put his child's needs first decreased. As he became more isolated and felt discounted by the world, he discounted her needs and feelings."

Dr. Tucker concluded that although petitioner said he would not physically or emotionally abuse the child again, it was not clear that he understood why or what effect physical discipline has on Britney. Dr. Tucker recommended that Britney remain where she was placed and that monitored visitation continue. While reunification was possible, it would depend upon petitioner's understanding the impact of his behavior on Britney, what he needed to do to repair the damage done by his and Britney's mother's behavior, and to take responsibility and apologize for abusing her. Dr. Tucker also emphasized that therapy was "vital."

Britney's therapist continued to recommend against conjoint counseling at that time because Britney was not ready and it would impede her progress. The therapist stated, "It is my clinical opinion that the stress of visitations with her uncle, her fear of being alone with any adult male, and the uncertainty of placement cause episodic reoccurrences of Britney's symptoms. These setbacks appear to be impeding the course of her treatment."

A contested section 366.22 hearing took place on June 16, 2004, during which both DCFS and counsel for Britney argued reunification services should be terminated. After considering all of the reports and arguments from counsel, the juvenile court found DCFS had provided reasonable services. The court observed petitioner had procrastinated in obtaining no or low cost counseling that was indeed available. The court found petitioner in partial compliance, and stated that the steps needed to address the problems that originally brought the case to the court and that need to be taken to have Britney returned to petitioner have only just begun.

Despite the fact the juvenile court terminated reunification services, it ordered conjoint counseling to take place when Britney's therapist deemed the child would benefit from it. The court also ordered that petitioner be in individual counseling to focus on himself and his disability. The court emphasized to petitioner that Britney was reluctant to be in his presence and have him be in hers. The court set the matter for a section 366.26 permanency planning hearing. This petition followed.

PETITIONER'S CONTENTIONS

Petitioner contends the juvenile court erred in terminating reunification services and that he was not provided with reasonable services. We disagree and conclude the juvenile court's rulings are supported by substantial evidence.

DISCUSSION

1. Substantial Evidence Supports Termination of Reunification Services.

Section 366.22 provides that within 18 months after a dependent child was originally removed from the physical custody of his or her parent, a permanency review hearing must occur to review the child's status. At the hearing, the court must order the child's return to the physical custody of the parent unless the court finds, by a preponderance of the evidence, that the return of the child to the parent would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. In making its determination, the court is required to consider the efforts or progress, demonstrated by the parent, and the extent to which the parent took advantage of the services provided. The failure of the parent to participate regularly and make substantial progress in court-ordered treatment programs is prima facie evidence that the return would be detrimental. (§ 366.22, subd. (a).)

The juvenile court's determination that a child would suffer detriment if returned to the physical custody of the parent is reviewed on appeal for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) "Substantial evidence" means such evidence as a reasonable mind might accept as adequate to support a conclusion. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) An appellate court must construe all evidence in the light most favorable to the finder of fact (*In re Michael G.* (1993) 19 Cal.App.4th 1674, 1676), and the trial court's exercise of discretion will not be disturbed except on a showing that the trial court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. (*In re Brequia Y.* (1997) 57 Cal.App.4th 1060, 1068.)

When two or more inferences can reasonably be deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court. (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 598; see also *In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319 [in the presence of substantial evidence, appellate justices are without power to reweigh conflicting evidence].)

The evidence indicates that petitioner completed a program of parent education and continued to attend parenting classes after completion of the initial program. However, there is no evidence that petitioner substantially complied with what appears to have been the most vital part of the case plan -- individual counseling and anger management. While petitioner started individual counseling in December 2002, he stopped attending the sessions sometime in 2003 and never again re-enrolled in any type of individual counseling, despite a court order that he do so. Furthermore, there is no evidence petitioner ever addressed anger management in individual counseling.

In addition, even if petitioner had complied with the technical requirements of the reunification plan, that by itself would have been insufficient. In addition to consideration of compliance with court-ordered programs, the court must also consider the parent's substantive progress and his capacity to meet the objectives of the plan. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1143; § 366.21, subd. (f).) Such consideration includes the manner in which the parent has conducted himself in relation to the child in the past. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705, citing *In re Jasmon O.* (1994) 8 Cal.4th 398, 424, and *In re Laura F.* (1983) 33 Cal.3d 826, 833.)

The record in this case is replete with indications that petitioner did not make substantive progress because he continued to blame Britney for their problems and failed to take responsibility for abusing Britney. The social worker aptly summarized the evidence. "During the eighteen months of court ordered Family Reunification Services for this family, [DCFS] has continually and consistently experienced [petitioner's] identification as a victim regarding his family's involvement with [DCFS]. [Petitioner] was court ordered to address his anger management through individual therapy, which he has failed to do. Further, [petitioner] has not demonstrated his ability to appropriately express his frustration and anger as experienced by most professionals he interfaces with regarding Britney's schooling, therapy, and when interacting with DCFS staff. [Petitioner] continues to verbally assault DCFS professionals and school personnel. Additionally, the caretaker, Vivian . . . continues to refuse to monitor the visits as a result of his ass[au]ltive attitude towards her. He continues to use shame with Britney by stating the child's tears are 'manipulative

crocodile tears’ to get what she wants. . . . [Petitioner] continues to identify Britney’s behavior as the source for the family’s involvement in the ‘system.’ Additionally, [DCFS] has not observed nor received any reports of [petitioner] expressing remorse or empathy for the corporal punishment he inflicted on the child. [¶] The child continues to report to the [social worker] that she is afraid of reunification with [petitioner] due to the fear of him re-abusing her. . . . [¶] Based upon the above, DCFS is concerned that reunification for the child and [petitioner] would not be in the best interest for Britney, as the issues that have brought the family before the court remain[] unresolved. . . .”

Accordingly, we find substantial evidence to support the juvenile court’s order terminating reunification services.

2. *Petitioner Received Reasonable Reunification Services.*

The adequacy of reunification plans and the reasonableness of DCFS’s efforts are judged according to the circumstances of each case. (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) Moreover, DCFS must make a good faith effort to develop and implement a family reunification plan. (*Ibid.*)

The finding that reasonable services were offered is reviewed for substantial evidence. (*Robert L. v. Superior Court* (1996) 45 Cal.App.4th 619, 625-626; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) ““In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the respondent. We must indulge in all legitimate and reasonable inferences to uphold the verdict. If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed.”” (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1472.)

Petitioner contends he was not provided reasonable services because conjoint counseling never took place. But the evidence is clear that the lack of conjoint counseling was not due to any failure or deficiency on the part of DCFS but rather because Britney’s therapist believed such counseling would not be in Britney’s best interest.

On three occasions the juvenile court ordered that conjoint counseling was to take place when Britney’s therapist deemed it appropriate. However, Britney remained frightened of further abuse from petitioner and being left alone with him. These anxieties

resurfaced through various symptoms prior to and after her visits with him. Britney's therapist opined on three separate occasions that conjoint counseling was premature and would hinder the progress she had made and was making, including the progress she had made with her Post-Traumatic Stress Disorder. Britney shut down and withdrew whenever the issue of conjoint counseling was discussed. Even Dr. Tucker, who agreed with Britney's therapist that she was suffering from Post-Traumatic Stress Disorder, believed conjoint counseling should take place only when Britney could benefit from it as determined by her therapist.

Accordingly, we reject petitioner's contention that reasonable services were not provided and find the juvenile court's order was supported by substantial evidence.

DISPOSITION

The petition for writ of mandate is denied, and the order to show cause is discharged. This opinion is final forthwith as to this court pursuant to rule 24(b)(3) of the California Rules of Court.

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FLIER, J.

We concur:

RUBIN, Acting P.J.

BOLAND, J.